Supreme Court, U.S.
FILED
01.6 4 JUNE 2001
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Dorina Cutler and Yolanda Jablonski,
Petitioners,

versus

Estate of Antonio Agostinelli
Antoinetta D. Greenberg, Executrix
Respondent.

Dorina Cutler and Yolanda Jablonski,
Petitioners

versus

Lawrence Greenberg,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

Dorina Cutler
8043 Valencia Avenue
Stockton, CA. 95209
209-474-9047

Yolanda Jablonski
168 N. State Route 59
Barrington, Ill. 60010
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QUESTIONS PRESENTED

10. Whether procedural errors and atmosphere to collusion and partisanship between courts and Respondents denied Petitioners their rights to property and to share equitably in their father's estate without affording them due process of law as guaranteed by the fourteenth amendment to the United states Constitution.

11. Whether procedural errors and atmosphere of collusion and partisanship between court and Respondents deprived Petitioners of their rights to property and to share equitably in their father's estate under color of State law without affording them due process of law as guaranteed by 42 U.S.C. section 1983.

LIST OF PARTIES

The Parties Herein:

Dorina Cutler.....Plaintiff
Yolanda Jablonski.....Plaintiff
Lawrence Greenberg.....Defendant
Antoinetta Greenberg.....Defendant

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United States Constitution, Amendment XIV.

42 U.S.C. section 1983.

Matthews v. Eldridge, 424 U.S. 319

Brown v. McGarr, 774 F.2d 777 (7th Cir. 1985).

United States v. Gallagher, 183 F.2d 342 (2nd Cir. 1950).

OPINION

The opinion sought to be reviewed is that of the Connecticut Supreme Court in Dorina Cutler and Yolanda Jablonski, vs. Estate of Antonio Agostinelli, Antoinetta D. Greenberg, Executrix, docket number CV 97-0398566, and Dorina Cutler and Yolanda Jablonski vs. Lawrence Greenberg, docket number: CV 98-0410661, entered February, 2001; motion to reconsider dismissed March 30, 2001.

JURISDICTION

This is a case arising under the Fourteenth Amendment to the United States Constitution and under 42 U.S.C. section 1983

STATEMENT OF THE CASE
FACTUAL HISTORY

Antonio Agostinelli died leaving a Last Will and Testament dated July 26, 1967.

In Article Second of said Last Will and Testament, the decedent directed that all the rest, residual, and remainder of his estate both real and personal, of whatsoever kind and nature and wheresoever situated, he gives, devises and bequeaths to his beloved daughters, Antoinetta Greenberg a/k/a Della Greenberg of Orange Connecticut, Yolanda Jablonski of Ann Arbor, Michigan and Dorina Cutler of Freemont, California, in equal shares to them and their heirs absolutely and forever in fee simple.

His intent to have his daughters share in his estate remained the same until the date of his decease on December 18, 1988.

Della Greenberg was appointed executrix of the decedent's estate on January 26, 1989 and subsequently removed on December 30, 1991.

December 30, 1991, Attorney Edward C. Burt Jr. was appointed the Administrator of the Estate of Antonio

Agostinelli.

January 10, 1992, Attorney Burt Jr. informed Attorney Greenberg in writing of his appointment, subsequently rescinded his appointment.

February 26, 1992, Attorney Francis E. Lamboley, was appointed Administrator of the Estate of Antonio Agostinelli.

May 27, 1992, Attorney Gordon Raynor represented Dorina Cutler and Yolanda Jablonski in the Estate of Antonio Agostinelli.

July 7, 1992, a Complaint was filed in Superior Court by Yolanda Jablonski and Dorina Cutler, Pro-Se, for Damages. Docket No. CV 92 0335720 S.

September 9, 1993, Dorina Cutler was appointed Successor Administratrix c.t.a. of the Estate of Antonio Agostinelli.

January 11, 1995, trial date of CV 92 0335720 S, Judge Harold Mulvey presided awarding Yolanda Jablonski and Dorina Cutler ten thousand dollars each for damages.

November 11, 1995, Judge Diglio of the Hamden Probate Court recused himself from the doings in the Estate of Antonio Agostinelli, by request of Yolanda Jablonski.

January 5, 1996, Judge Keyes was cited in to act as judge for the Antonio Agostinelli Estate.

July 22, 1996, Judge Keyes recused himself of the doings of the Estate of Antonio Agostinelli.

January 17, 1997, Judge Robert K. Killian Jr. resided over the Antonio Agostinelli Estate.

January 22, 1997, Decree by Judge Killian accepting an (erroneous) accounting of the removed fiduciary Della Greenberg).

February 19, 1997, a Decree, allowing Dorina Cutler and Yolanda Jablonski to appeal the Decree by Judge Killian.

March 24, 1997, A Complaint was filled against Della Greenberg by Dorina Cutler and Yolanda Jablonski involving an Appeal from Probate to the Superior Court of New Haven Connecticut. Docket No. CV 97 3986566 S.

May 30, 1997, A Motion to Strike was filed by Attorney

Cirillo, counsel for the defendant, asking several counts in Plaintiffs' Complaint to be stricken and requiring Argument and Testimony.

November 1996, a hearing was held regarding issues of the estate. Superior Court Judge Bruce L. Levin presided.

January 22, 1998, Complaint was filed by Dorina Cutler and Yolanda Jablonski vs Attorney Lawrence J. Greenberg.

January 27, 1998, - Memorandum of Decision by Bruce L. Levin, Judge of the Superior Court stating " Defendant's Motion to Strike (5.30 .97) is DENIED, and plaintiffs are ordered to amend their Complaint to Reasons of Appeal."

February 10, 1998, Reasons of Appeal were filed by Dorina Cutler and Yolanda Jablonski.

March 10, 1999, after much deliberation, Plaintiffs received notice of a Court Date of April 21, 1999.

April 21, 1999, Judge Patty Pittman presided. She decided to try the two cases together even though one was for damages and the other was an Appeal. Trial lasted two days.

July 8, 1999, Judge Patty Pittman's Memorandum of Decision dismissed the Reasons of Appeal, CV 97 398566S and favored the defendant Attorney Lawrence Greenberg, Docket no. CV 98 0410661.

September 30, 1999, Dorina Cutler and Yolanda Jablonski appealed to the Appellate Court, receiving Docket no. 20118 on October 20, 1999.

November 14, 2000, the Appellate Court upheld the decision of the Superior Court.

On January 6, 2001, Dorina Cutler and Yolanda Jablonski put in a Petition for Certification to the Supreme Court of the State of Connecticut. It was Dismissed.

PROCEDURAL HISTORY

Court of Probate, District of Hamden, Connecticut
Judge Salvatore L. Diglio - Judge John A. Keyes
Judge Robert K. Killian

Petitioner - Dorina Cutler
Petitioner - Yolanda Jablonski
Respondent - Antoinetta Della Greenberg A/K/A Della Greenberg
Attorney Lawrence Greenberg, Nephew and Counsel for Respondent

Judge Diglio failed to hold the Respondent Della Greenberg to the same rules of law governing the settlement of their father's estate, but did hold the Petitioners to the rules of court, violating their right to the Fourteenth Amendment of the Constitution.

The Respondent did not comply with a must appear order; did not comply with an order to file an accounting of the estate or the Court would be forced to proceed pursuant to C.G.S. Sec. 45a-129; claimed assets that did not have her name as beneficiary; refused to turn over the documents and assets of the estate to Court appointed administrators; refused to comply with a Subpoena. Judge Diglio allowed the Respondent's counsel to take over his Court and would not allow the Plaintiffs to address the enforcement of the court's orders, violating the plaintiff's rights under the Fourteenth Amendment of the Constitution. - Judge Diglio recused himself November 20, 1995.

The Respondent's counsel, Attorney Greenberg, refused to comply with Judge John A. Keyes' Memorandum of Decision. Judge Keyes did not enforce his orders and would not allow the Petitioners, even with documented evidence to refute what Attorney Greenberg was informing him. Petitioners contend that this was a violation of the Fourteenth Amendment of the Constitution. - Judge Keyes recused himself on July 22, 1996.

Judge Robert K. Killian, was the third judge cited in to hear the contested issues of the estate. Judge Killian, after talking with the Respondent's attorney Lawrence Greenberg, prior to the hearing without the Petitioners present, walks into the Court followed by Attorney Lawrence Greenberg. The Judge did not

address the contested issues when the petitioner, Dorina Cutler, Successor Administratrix c.t.a, tried to present a scribbled estate bank book, Judge Killian took a piece of paper and showed that he too scribbled, when the issue of lost redemption slips came up, Judge Killian tells the petitioners that he too looses important papers.

Judge Killian tried to give the Petitioner Yolanda Jablonski three hundred dollars and became angry when the Petitioner refused. The Petitioners had to listen to Judge Killian extolling the superior knowledge of the Respondent's Attorney. Judge Killian became the advocate for the Respondent's attorney and even told the petitioners the Will came under the 'Old English Law', and that the Respondent and her attorney could do what they wanted with the estate.

The Respondent was appointed Executrix of the estate on January 26, 1989 and was subsequently removed December 30, 1991. The Respondent refused to recognize the authority of the Court Appointed Administrators, Attorney Edward C. Burt Jr., Attorney Francis E. Lamboley, and finally, Petitioner Dorina Cutler was appointed Successor Administratrix c.t.a of the estate on September 9, 1993.

Petitioners appeal to the Superior Court Judicial District of New Haven Connecticut, from the Decree of Judge Killian of the Hamden Connecticut Probate Court.
0398566S - Will - Probate Appeals - 04-03-1997
CV97
Cutler, Dorina - New Haven 04-03-1997
VS. Not on TRLST
Est. of - A. Agostinelli Privileged

Judge Patty J. Pittman Judge Michael Hartman
Judge Bruce L. Levin Judge Joseph A. Licari
Judge Antony V. Demayo Judge Jonathan E. Silbert

Judge John C. Blue

Petitioners: Dorina Cutler and Yolanda Jablonski Pro-Se
Respondent : Della Greenberg, represented by Attorney James F. Cirillo Jr.

Petitioners filed a complaint titled Dorina Cutler Et Al vs. Antoinetta Della Greenberg A/K/A Della Greenberg, dated March 24, 1997 with a return date of May 26, 1997. There is no file stamp on the complaint by the Court.

The Respondent's attorney filed a Motion to Strike the counts in the complaint. On January 27,1995, Superior Court Judge, the Honorable Bruce L. Levin, Denied the Motion to Strike and ordered the Petitioners to file a 'Reasons of Appeal'. The complaint was a procedural defect. The Petitioners Reasons of Appeal was stamped and filed in the Superior Court February 27, 1998 with the Number 398566, Judicial District of New Haven Superior Court.

On April 21, and 22, 1999 trial was held. Judge Patty Pittman presided. Without notice and with objection by Petitioner Yolanda Jablonski who was testifying under cross examination by the Respondent's attorney, that the Petitioners were there to testify regarding the Reasons of Appeal, and reminded the Court of Judge Levins Memorandum of Decision. - Judge Pittman agreed with Attorney Cirillo, to proceed with the Procedural Defective Complaint...Judge Pittman vacated Judge Levins orders without notice to the Petitioners. The Superior Court never stamped the complaint as filed. Defending the defective complaint became a Third Consolidated Case. The Judge never filed a Judgement.

Reasons of Appeal 398566

On April 21, 1999, the Petitioners entered the Court of Judge Patty J. Pittman. The petitioners asked that the trial dates of

the Reasons of Appeal and the Case for Damages against Attorney Lawrence J. Greenberg be heard on separate days. Judge Pittman refused the request.

The Petitioners reminded Judge Pittman that a Default For Failure To Plead against the Respondent was Granted, and this was verified by the clerks office, prior to the Petitioners entering the Court. Judge Pittman vacated the Default and the Petitioners, to this day have not received a pleading involving the Actions in the Reasons of Appeal. The Respondents 'Special Defense' answered the Third Case that involved the Defective Complaint.

The Petitioner, Yolanda Jablonski tried to have the terms of the subpoena, served by authority of the Superior Court to the respondent, enforced, but Judge Pittman cut the petitioner off when the Respondent's attorney indicated that his client was compliant, but his client was not.

Judge Pittman's rule was that the petitioners could only speak when the judge allowed. The two attorneys were allowed to sit at the same table and confer. Attorney Lawrence Greenberg Pro-Se on the second case, was allowed to defend the Respondent along with Attorney Cirillo. Attorney Cirillo was allowed to defend the Pro-Se Attorney Lawrence Greenberg. Judge Pittman defended the Pro-Se attorney, Mr. Greenberg.

When the Petitioner called the Respondent to testify and the Respondent threw questions back at the Petitioner, the Petitioner turned to Judge Pittman twice to caution the witness to answer the questions, the Judge put her head on her hand and allowed the Respondent to throw questions back at the Petitioner and rambled on.

Judge Pittman vacated the Default and Petitioners have never seen a pleading from the Respondent that involved the action in the Reasons of Appeal.

The Respondent refused to comply with the rules of Discovery. The many Motions for Discovery were not complied with and the Motion to Compel Discovery was filed and Denied By The Court.

Petitioners with a reliance on the Fourteenth Amendment of the Constitution, found these actions were disastrous to Due Process.

0410661 S Tort Malpractice - Legal 03-17-1998
CV 98
Cutler, Dorina A. Et Al New Haven 03-16-1998
VS
Greenberg. Lawrence J. Non Priv.

This is the second of the three consolidated cases heard for trial, that of Dorina Cutler and Yolanda Jablonski vs Lawrence Greenberg. It is a lawsuit for Money Damages. In general the Respondent committed legal malpractice in the handling of the estate of Antonio Agostinelli who died December 18, 1988.

Respondent, Attorney Lawrence Greenberg, involved himself in the estate by having assets and documents in his possession in 1988 prior to the Hamden Connecticut Probate Court notification of the decedent's demise.

The respondent asked the two Petitioners for three thousand dollars each, informing them in December of 1988 that the estate was cash poor and had no liquid assets. The estate had bonds, the decedents bank account and stocks.

The Respondant asked the Petitioners for money in order for the Respondent to give the Petitioner an inventory of the estate.

The Respondent claimed bonds and the decedent's bank account for his client, Della Greenberg.

The Respondent tried to have the Petitioners sign away rights to the Decedents bank account and bonds by offering seven thousand dollars for assets worth approximately seventy thousand dollars.

The Respondent threatened the Petitioner, Yolanda Jablonski with litigation for breech of contract in the sale of the decedents home to his client . Respondent did not honor the contract and charged the petitioners eight hundred dollars for his clients loss in obtaining a mortgage. There was no

contingency for any mortgage, and there was no court approval of the sale of the decedent home . Judge Diglio did nothing to enforce the rules that govern such a transaction.

The Respondent refused to turn over documents and assets of the estate to any court appointed administrator when his client was removed as executrix on December 30, 1991.

The Respondent took two thousand five hundred dollars as his fee with out court approval.

The Respondent refused to comply with Judge Diglio orders to send in a complete accounting of the estate or the court will be forced pursuant to C.G.S Sec. 45a-129. The Respondent refused to comply. The court did not enforce its orders.

The Respondent told Judge Diglio that all contested issues were resolved by the Petitioners since the petitioners filed a case for title. The Petitioners never filed a case for title in the Superior Court of New Haven, Connecticut. Superior Court has no record of a case for Title.

The Respondent refused to comply with a subpoena ordered by the authority of the Hamden Connecticut Probate Court. It was sent by the third administratrix c.t.a. Petitioner Dorina Cutler, and served by the New haven Connecticut sheriff.

A hearing was scheduled for contested issues that the executrix Dorina Cutler called. Judge killian was cited in for the estate at that time. The Respondent went into the judges chamber while the Petitioners Dorina Cutler and Yolanda Jablonski were left outside of the court room. Ms. Jablonski looked at her watch and more than 20 minutes had passed before the parties had entered the courtroom. Judge Killian entered the court room followed by the Respondent Lawrence Greenberg. Judge Killian began by saying, "We are not here to punish Attorney Greenberg." This was not one of the contested issues. Judge Killian continued to talk of disappointment and gold and silver stars. Judge Killian referred to the decedent bank account and told the Petitioners that they had filed a case for title and throws a document down that clarified that the case was for damages and not for title.

When the administratrix tried to present the estate bank book, Judge Killian took a piece of paper and demonstrated that he too scribbles like the respondent Attorney Greenberg. When the issue of lost redemption slips were brought up Judge Killian tells the petitioners that he also loses important papers. Judge Killian had the petitioners listen to him speak of the superior knowledge the Respondent had and became the Respondent's advocate.

Judge Killian tried to give Yolanda Jablonski $300.00 and became angry when the Petitioner refused.

Judge Killian told the Petitioner that the decedent's Will came under the 'Old English Law', and the Respondent and his client could do what they wanted with the estate.

The ex parte communication caused the Petitioners their rights to a fair hearing.

The petitioners filed a complaint for damages against the respondent Lawrence Greenberg in the New Haven Superior Court.

The footnote of the trial court notes that all of the tortious conduct of which the petitioners complain took palace in 1993 and earlier. The trial court is in error. The evidence proves that the respondent continued until January 17, 1997.

Counts 1 & 2: The trial court's decision was that the Respondent had a meeting with all parties in 1989 for a loan of $3,000.00 from each of the petitioners since the estate was cash poor and there were no liquid assets. Petitioners were never at such a meeting or heard the word loan. The court made the decision that bonds, stocks and the decedent bank account are not liquid assets. The courts decision supported the fact that the Respondent did not misrepresent the estate as being cash poor and having no liquid assets.

The respondent asked the Petitioner Yolanda Jablonski for $10,000.00 for an inventory of the estate. Petitioner Dorina Cutler was asked for $100.00 an hour to have the Respondent turn over a complete inventory of the estate to the administrator

Francis E. Lamboley. A written communication to Judge Diglio to advise if this would be permitted, then the petitioner would pay the Respondent $100.00 an hour as the Respondent requested. Judge Diglio did not answer.

Count 3: The Respondent, while his client was fiduciary, made an offer of $7, 000.00 for assets, decedents bank account, bonds and Yolanda Joblonski's bank account worth approximately $76,000.00. The Respondents letter referred to this as a financial matter. The trial court credits the testimony of the Respondent that no such statement was ever made, and that the Petitioners did not sustain any damages.

Count 4: The trial court alleges that the wrongful withholding of estate assets by the Respondent, Lawrence Greenberg, from the successor fiduciary Francis E. Lamboley, has failed to prove that the Petitioners did not suffer any money loss.

The Respondent concealed a communication from the First Constitutional Bank, that identified that the decedent's bank account was in the decedent's name only. This communication was concealed from May 10, 1989 to 1996, and was given to Judge Killian of the Hamden Probate Court.

Petitioners could not peruse this issue due to the Respondent telling the Hamden Probate Court as well as the trial court that the Petitioners had filed a case for title involving the bank account. The Petitioners never file a case for title and there is no judgement in Superior Court as to title involving the estate.

The Respondent refused to turn over bonds with the identity of the decedent's spouse who preceded the decedent in death and claimed these bonds for his client even with a baptism certificate identifying the decedent's spouse as Antonia and not Della Greenberg. The Respondent held on to these bonds from 1988 to January 11, 1995. The Trial court's decision was that the Respondent held these bonds in escrow. The respondent does not meet the requirements of escrow as an independent third party.

The Respondent caused the Petitioners a loss of money as well as using court time, for assets that were clearly a part of

the estate, and used the court system to his advantage.

The Respondent, in 1989 had the Petitioners pay a disproportionate amount of taxes and refused to pay the Petitioners, even with the orders of Judge Keyes, March 7, 1996.

Respondent testified in the trial court that the disproportionate amount of taxes were paid out of the estate when in fact the payment was made by personal check, and then after a period of eight years. The trial court decides this was not a monetary loss.

Count 5 & 6: The Respondent filed an affidavit of the decedent's safety deposit box that had his client as the spouse of the decedent. The banks entry to the safety deposit box verifies that a false affidavit was filed by the Respondent.

The trial court's decision was that the affidavit prepared by the Respondent, of the content was incorrect because of the confusion over the name Antoinetta Agostinelli or Antonetta or Antonia Agostinelli on the disputed bonds referred to the late wife of the decedent or referred to the maiden name of Della Greenberg. - The Respondent had the baptism certificate identifying the disputed bonds as belonging to the spouse of the decedent.

Count 7 & 8: The trial court's decision was that the transaction of the sale of the decedent's residence to the Respondent's client was fully completed on November 24, 1989. - The transaction was completed on June 10, 1996. The petitioner administratrix Dorina Cutler had to sign a Return of Sale or Mortgage of Real property PC-481 and signed by Judge Keyes to correct the errors the Respondent made in the sale of the decedents domicile. The trial court made decisions about rental payments and adjustments as to the closing price as well as the savings from the Agostinelli/Jablonski bank account . The only requirement that Yolanda Jablonski had was that the Probate Court approve the sale.

The Respondent broke the original contract and sent out a Quit Claim Deed. The petitioner, Yolanda Jablonski refused

to sign the Quit Claim Deed without Court Approval. The Respondent threatened the Petitioner with breech of contract that sent her to Attorney E. Bloomquest in Illinois. The Respondent charged the Petitioners $800.00 for his clients loss in obtaining a mortgage when there was no contingency for a mortgage. The trial court decides there is no loss of money to the petitioners.

Count 9 & 10: The Trial Court refers to the fact the Respondent lost a record of stock dividends and the estate bank account had a few scribbled entries pertaining to dividends without dividend slips. The Respondent did conceal, as in Count 4, the identity of the decedent's bank account and this bank account was converted either by the respondent or his client. Trial Court's decision was that this was not below the Standard of Care for attorneys.

The Respondent wrote a check out of the estate checking account on May 26, 1993 for $650.16 to the administrator Francis E. Lamboley and did not give him the estate checking account.

The Respondent testified that his only doings in the estate was to do the paperwork for Probate and that was the extent of his duties.

The trial court's decision was that the Respondent was credible and his actions were considered Standard of Care for attorneys involved in Probate matters.

Count 11 & 12: On May 26, 1993, The Respondent gave $650.16 to Francis E. Lamboley, administrator of the estate but did not turn over the estate bank account.

The trial court does not agree with the Probate Court's appointment of Francis E. Lamboley as administrator c.t.a. on Feb 26.1992, and then decides if indeed he was ever appointed administrator of the estate until May of 1993.

The trial court's decision was that the respondent properly administered the estate bank account until he was obliged to turn over the funds to the successor fiduciary.

The Respondent, contrary to the Trial Court's decision, was

obliged to turn over all assets, documents and funds of the estate to Attorney Edward C. Burt Jr. on December 30, 1991.

The trial court's Memorandum of Decision states that the propounders of evidence favors the plaintiffs petitioners, but makes a decision in favor of the pro se Attorney Greenberg in whom the Court has determined is credible, and meets the Standard of Care for Attorneys in Probate.

Petitioners filed two Motions to Reopen and Set Aside the trial court's Memorandum of Decision. Both were denied.

Dorina Cutler Et Al v. Antoinetta D.
Greenberg, Executrix (Estate of Antonio Agostinelli)
Dorina Cutler Et Al v. Lawrence J. Greenberg
(AC 20118)
Schaller, Pellegrina and Dupont Jr.

Argued September 14,-officially released November 14, 2000

Counsel

Dorina Cutler, pro se, and Yolanda Jablonski, pro se, the appellants (plaintiffs in each case).

James C. Delaney, with whom on the brief, was James F. Cirillo, Jr. for the appellee (defendant in the first case).

Lawrence J. Greenberg, pro se, the appellee (defendant in the second case).

First Claim:

The Appellate Court's decision is that the plaintiff petitioners enjoyed every right guarenteed to them by law.

The trial court had the petitioners defend the Reasons of Appeal, a case for damages - malpractice, and a procedural error, defective complaint. The petitioner Yolanda Jablonski objected to the trial court vacating the decision of Judge Levin that stated the complaint was a procdural error. The trial court did not agree and had the petitioners go forward to defend the defective complaint.

The trial court allowed the respondant's attorney James Cirillo and the pro se, Attorney Lawrence Greenberg on the second

case to sit at the same table and confer.

Second Claim:

The Appellate Court refers to a subpoena issued by the probate court. The subpoena in the trial Court was issued by the jurisdiction of the New Haven Superior Court. The respondent's attorney advised the court that his client was compliant and the trial court would not let the petitioners pursue the issue.

Third Claim:

The trial court removed the Default for Failure to Plead involving the Reasons of Appeal against the respondent. The respondent's special defense answered the actions in the procedural error complaint. The default was in effect and this was verified by the Superior Court clerk prior to the trial.

Fourth Claim:

The Appellate Court decided that the respondent's actions satisfied the Standard of Care that the law requires of fiduciaries.

The Hamden Probate Court removed the respondent for failure of her fiduciary duties.

Fifth Claim:

The Appellate Court's decision is that Lawrence Greenberg who was appearing pro se in the second case, had the right to defend the respondent when testifying involving the Reasons of Appeal.

The trial court allowed the respondent to be defended by two attorneys. One who filed an appearance and one who did not file an appearance.

Claim six:

The Appellate Court's decision, involving the decedents ' in trust' bank accounts (there were no in trust bank accounts), had been adjudicate in a prior Superior Court action on January 11, 1995.

The petitioners had filed a Complaint for Damages on June 10 1992 with a return date of July 14, 1992. - Attorney Lamboley was the successor administrator of the estate at that time. - The Complaints' Ad Damnum is very specific, that the

petitioners were there to recover the debts they had accrued due to the actions of the respondent.

The trial court would not allow the petitioners to pursue this issue since the respondent's attorney informs the court that the case was for title and it is raised judicata. The Superior Court does not have a judgement for title nor a case filed for title.

The trial court changed how the case was filed by the petitioner.

The trial court's Memorandum of Decision stated 'joint bank accounts' that the petitioners have never seen or testified to.

Seventh claim:

The Appellate Court's decision, that the petitioners did not adequately prove inaccuracies in the administration account.

As of November 1993 the respondent filed an administration accounting of the estate.

The Honorable John A. Keyes, judge of the Hamden Probate Court's Memorandum of Decision dated March 7, 1996 ordered the that the disproportionate amount of taxes that the petitioners paid in 1989 be returned to them. All records shall be immediately turned over to the fiduciary.

Judge Keyes' Memorandum of Decision dated June 21, 1996 orders redemption prices of certain bonds be delivered to the administrator within a specific time.

Memorandum of Decisions are evidence in the trial court dated in the year 1996. The administration account of the respondent was stamped Nov 4 1993.

Last Claim:

The trial court had evidence that Attorney Francis E. Lamboley was appointed successor administrator of the estate in 1992 not in May of 1993. The petitioners were trying to refer to the administration account in the Reasons of Appeal that referred to the administration account that listed no assets of the estate. This accounting was approved by the Hamden Probate Court.

First Issue.

The respondent never filed an appearance in the Hamden Probate Court.

The respondent, in December of 1988, prior to the courts notification of the decedents demise had assets of the estate in his possession. The respondent solicited $3,000.00 from each of the petitioners by misrepresenting the estate as being cash poor and there were no liquid assets. Bonds, stocks, bank books, are all liquid assets.

The respondent testified that his only doings in the estate was to do the paperwork necessary for probate, and that was the extent of his duties.

Second Issue:

The petitioners did not use the word excessive. The respondent removed money out of the estate account on November 9, 1990 and again on July 17, 1991 for his fee without the court approval and refused to turn in the fee when served by a subpoena by the authority of the Hamden Probate Court.

The respondent's letter offering the petitioners $ 7,000.00 that involved assets of the estate, - the decedent's bank account, bonds, and withdrawals from the bank account of petitioner Yolanda Jablonski, worth approx $76,000.00. This is not heresy. Evidence is in the court.

The Appellate Court credits the trial court in assessing creditability.

Third Claim:

The trial court explicitly found that the respondent did not withhold assets of the estate and relied only on a delay in handing over estate assets to the successor administrator Francis E. Lamboley. The Appellate claims the petitooners did not provide the trial court with evidence.- The petitioners, provided the trial court with Memorandums of Decision of Judge Keyes of the Hamden Probate Court, as well as the communication of the successor administrator Attorney Francis E. Lamboley, demanding that the respondent turn over the bonds that belonged to the estate.

The Successor Administrator Francis E. Lamboley did not receive any assets or documents of the estate.

The Appellate Court refers to only a delay in turning over assets of the estate. That delay was from December 30, 1991 to 1996 when some of the documents were turned over to the third administratrix petitioner Dorina Cutler. This was a period of 5 years and the court considers this just a delay.

The trial court noted that the funds never were misused or misplaced and were turned over later than expected if the administration of the estate was without conflict.

The Appellate Court found that the importance of the trial court in assessing credibility and fact finding.

In 1989 the respondent had the petitioners pay a disproportionate amount of taxes. - See Judge Keyes' Memorandum of Decision Mar 7 1996 .

The respondent testified in the trial court that the petitioners were paid out of the estate assets when in fact in 1997 the petitioners were paid by personal check. These funds were used from 1989 to 1997. See exhibit the estate checking account.

The conflict arose due to the fact that the respondent concealed a communication dated May 10 1989 from the First Constitution Bank that identified the decedents bank account,($60,000) as being in his name only from 1989 to 1996.

Petitioner tried to pursue this issue in trial court but the respondent claims raised judicata. This account was never turned over to the estate.- The bonds were held from 1989 to Jan 11, 1995. Even with a baptism certificate identifying the bonds as belonging to the estate. - The respondent did not comply with any court orders or subpoena to turn over these assets and document to the court appointed administrators once his clients was removed. Evidence to this fact is in court.

Fourth Issue:

The respondent filed a false affidavit in the Hamden Probate Court on March 5, 1996. The respondent knew of the safety deposit box since 1990.

The Appellate Court found that the respondent assisted in the preparation of a safety deposit box when he learned of its existence. - The respondent learned of its existence in 1990 and prepared the affidavit in 1996.

Fifth Issue:

The Appellate Court found that the respondent was professional and appropriate in threatening the petitioner Yolanda Jablonski with litigation for breech of contract in the sale of the decedent's home. - The petitioner signed a Quit Claim Deed under duress since the respondent refused to obtain court approval. The respondent charged the petitioners $800.00 for a loss of his client in obtaining a mortgage when there was no stipulation in the contract for a mortgage. The sale of the decedent's home dated November 24, 1989 was approved and confirmed June 10, 1996 through the efforts of petitioner administratrix Dorina Cutler.

Sixth Issues:

The trial court, given the above claim, decision is that the respondent was not negligent and met the Standard of Care for attorneys . The Appellate Court agrees with the decision.

Seventh issue

The trial court determined that there was no communication between the respondent and the administrator Francis E. Lamboley until May of 1993. Trial court has evidence of written communication in 1993, that proves that there was communication before May of 1993. The Appellate Court agrees with the trial court.

Last Issue:

on January 17 1997 a hearing for contested issues was called by Dorina Cutler. At that time the respondent entered the chamber of Judge Killian. The beneficiaries, Dorina Cutler, Della Greenberg and Yolanda Jablonski were out side of the court room for 20 plus minutes . The beneficiaries entered the court room. Judge Killian came in followed by the respondent. Judge Killian opened the hearing by stating "we are not here to punish Attorney Greenberg" (respondent), and talked about

disappointment and gold and silver stars. Gold and silver stars are for children not adults.
The administratrix (petitioner) tried to show him the scribbled bank account. Judge Killian took a piece of paper and demonstrated how he too scribbles.
The petitioner administratrix brought up the Lost redemption sheets, Judge Killian stating he too looses important papers.
The petitioners had to listen to Judge Killing extolling the superior knowledge of the respondent in Probate law. Judge Killian also stated the Will came under the Old English Law and the respondent and his client could do what ever they wanted with the estate.
The Appellate Court found that the Superior Court and a grievance panel found these allegations to be groundless and with out merit. we agree.

The Appellate Court states that the issue was not raised before the trial court and therefore the plaintiff petitioners should not be able to raise it on an appeal. - The $700.00 transcript that is in the Appellate Court shows this issue was raised in the trial court.

This is the first time that the petitioners are being accused by the Appellate Court for actions that they have no knowledge of. The actions are that the Superior Court and a grievance panel finds these allegations to be groundless and without merit. The petitioner never filed in the New Haven Superior Court a Motion for Sanctions against the respondent. Secondly the petitioners never filed a grievance for ex parte communication. If this Appellate Court has evidence that the petitioners name is on any document relating to sanction and grievance for ex parte communication, then the petitioners should have been able to see these documents and find the person that signed such a document.

The petitioners, given all the above actions, were not allowed their Constitutional Right to Due process and must address the problem because the petitioners believe there are many Americans experiencing their loss of rights in court.

ARGUMENT

The fundamental requirement of due process is having the opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, 424 U.S. 319. In evaluating due process requirements, the significance of an individual's loss must be balanced with the governmental procedural interest at stake; the Court must consider three factors: (1) the private interests that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of substantive procedural safeguards; and (3) the government's interest including the function involved and the physical and administrative burdens that the additional or substantive procedural requirements would entail. Brown v. McGarr, 774(tth Cir. 1985). In the present instance the Petitioners were denied any meaningful opportunity to be heard. The courts in Connecticut dealt with and corresponded with the Respondent on an ex parte basis. The courts were more concerned with protecting Respondents from the claims against them than from according Petitioners a fair or impartial hearing.

Once these matters reached the Connecticut Court of Appeals and the Connecticut Supreme Court, the Petitioners were essentially forestalled from obtaining a fair hearing by the momentum of force of the lower court rulings coupled with the reviewing courts' unwillingness to assess wrongdoing to the lower courts.

While it is true that a wrong decision upon the merits of the case by itself does not necessarily constitute a denial of due process so long as the opportunity for a full hearing was afforded (United States v. Gallagher, 183 F.2nd Cir. 1950)); here there was no full or fair hearing. Here, the Connecticut courts essentially acted with attorney Greenberg and Petitioners

were accordingly denied their day in court.

CONCLUSION

Petitioners are entitled to a full and fair hearing to their claims.

Respectfully submitted this 25th day of August 2001.

Dorina Cutler
8043 Valencia Avenue
Stockton, CA 95209
(209) 474-9047

Yolanda Jablonski
168 N. State Route 59
Barrington, Ill. 60010
(847) 382-7885

Petitioners, pro-se

TABLE OF APPENDIX

1. 05-05-1993 Order by Judge Diglio
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2. 06-11-1993 Letter Administrator Lamboley
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3. 10-13-1993 Order by Judge Diglio
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4. 10-13-1993 Order by Judge Diglio
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5. 03-07-1996 Memorandum of Decision
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6. 06-21-1996 Memorandum of Decision
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7. 01-22-1997 Decree of Probate Court
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8. 02-19-1997 Decree of Probate Allowing Appeal
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9. 01-29-1998 Memorandum of Decision
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10. 07-09-1999 Judgement
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11. 12-14-2000 Judgement
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12. 02-28-2001 Certification to Appeal
Connecticut Supreme Court

13. 03-30-2001 Dismissal of Appeal
Connecticut Supreme Court

Salvatore L. Diglio
Judge

Court of Probate
District of Hamden
2372 Whitney Avenue
Hamden, Connecticut 06518
Telephone 248-3561

May 5, 1993

Lawrence . Greenberg, Esq.
One Whitney Avenue
New Haven, CT. 06510

RE: Antonio Agostinelli, deceased

Dear Atty. Greenberg,

Kindly finalize and file a written Account of the Fiduciary's doings in this matter on or before May 14, 1993. Failure to do so will force the Court to proceed pursuant to C.G.S. Sec. 45a-129.

Very Truly Yours,

"S/ Salvatore L. Diglio "
Salvatore L. Diglio, Judge

cc: Antoinetta Della Greenberg
Francis E. Lamboley, Esq;
Gordon R. Raynor, Esq.

THE LAMBOLEY LAW FIRM
2827 Old Dixwell Avenue
Hamden, Connecticut 06518

Francis E. Lamboley
Harold J. Lamboley III

Phone (203) 287-8042
Fax (203) 287-9742

Lori A. Bessinger
Legal Assistant

June 11, 1993

Lawrence J. Greenberg
Attorney at Law
1 Whitney Avenue
New Haven, CT 06510

Re: Estate of Antonio Agostinelli

Dear Attorney Greenberg:

As Administrator of the above captioned estate, I hereby demand that you turn over to me the Series E Savings Bonds which you are holding which I claim is an asset of the estate.

Very truly yours,

"S/Francis E. Lamboley"
Francis E. Lamboley
Attorney at Law

FEL:lab

Salvatore L. Diglio
Judge

Isabelle E. Fazzone
Clerk

Court of Probate
District of Hamden
2372 Whitney Avenue
Hamden, Connecticut 06518
Telephone 248-3561

October 13, 1993

Antoinetta Della Greenberg
739 Racebrook Road
Orange, CT. 06477

Re: Estate of Antonio Agostinelli

Dear Attorney Greenberg:

Kindly finalize and file a written Account of the Fiduciary's doings in this matter on or before October 22, 1993. Failure to do so will force the Court to immediately proceed pursuant to C.G.S. Sec. 45a-129

Very truly yours,

"S/ Salvatore L. Diglio "
Salvatore L. Diglio, Judge

cc: Attorney Lawrence Greenberg
Dorina Cutler
Yolanda Jablonski

Salvatore L. Diglio
Judge

Isabelle E. Fazzone
Clerk

Court of Probate
District of Hamden
2372 Whitney Avenue
Hamden, Connecticut 06518
Telephone 248-3561

October 13, 1993

Lawrence Greenberg, Esq.
One Whitney Avenue
New Haven, CT. 06510

Re: Estate of Antonio Agostinelli

Dear Attorney Greenberg:

Kindly finalize and file a written Account of the Fiduciary's doings in this matter on or before October 22, 1993. Failure to do so will force the Court to immediately proceed pursuant to C.G.S. Sec. 45a-129

Very truly yours,

"S/ Salvatore L. Diglio "
Salvatore L. Diglio, Judge

cc: Dorina Cutler
Antoinetta Della Greenberg
Yolanda Jablonski

The Probate Court, District of Hamden, District No. 062
In Re: Estate of Antonio Agostinelli
Court stamped 'Received Mar' 7 1996'

Memorandum of Decision

The following orders shall issue herein:

1. The taxes shall be apportioned, based on the amount received, with each beneficiary or donee paying in proportion to his or her benefit.

2. All records shall be immediately turned over to the fiduciary. Attorney Greenberg shall cooperate in discovering or finding all other relevant documents.

3. As to the subpoena: A lawsuit was commenced on 7/7/92 by way of writ, summons and complaint. The Third count alleged ownership of the instant account. The "Ad Damnum" was for "more than $15,000.00" and the usual language for a wage execution upon judgement employed therein, to wit: "The plaintiffs seek satisfaction of the foregoing claim out of any debts accrued or accruing by reason of the personal services of the defendant".

This language has caused some confusion, but it is nothing more than the form language advising the defendant that if the plaintiffs won the case they could look to her "personal services" i.e. wages, for payment. At the time the case was brought, c.g.s. 45a-98 had not been amended, and the only place to try "title" was in the Superior Court. The Superior Court clearly had jurisdiction. Therefore, the Probate Court had absolutely no jurisdiction over who owned the accounts. They were not Probate issues.

An Answer was filed denying same on 11/11/92. There is no Amended Complaint filed. However, on 12/28/94 plaintiffs filed an "Answer", misnamed, asserting properly allegations as to ownership.

The judgement, signed by Judge Mulvey, on 1/11/95, reads as follows:

"Judgement for each plaintiff in the amount of $10,000.00, to be paid forthwith. It is further agreed that the savings bonds in the amount of 38 twenty five dollar bonds presently being held by Attorney Greenberg and presently an asset of the estate of the parties' late father Antonio Agostinelli are to be turned in cash and the monies divided equally among the three surviving sisters".

This judgement is conclusive as to the non-probate issue of who owns the bank account, unless revisited by the court entering same. (The first sentence above). There are many leading cases discussing the twin issues of the Res Judicata and Collateral Estoppel. Please see Saporosa v. Aetna, 221 Ct. 356, and PX Restaurant v.Windsor, 189 Ct. 153, with the latest being Buscone v. Dighello, 39 Ct. 753.

This judgement is clearly Res Judicata and Collateral Estoppel as to the bank account.

To conclude, the court with jurisdiction was the Superior Court, and it has acted. The Probate Court cannot act thereon, as only the Superior Court can enter or alter that court's judgement. The Motion for Sanctions is therefore, denied and the ownership of all assets described in the lawsuit precluded.

This decision may be appealed within thirty (30) days. The fiduciary shall file the Application to Sell and the S-4 as soon as possible.

Dated at Hamden, Ct. This 5th day of March, 1996.

"S/John A. Keyes"
John A. Keyes, Acting Judge

The Probate Court, District of Hamden, District No. 062
In RE: Estate of Antonio Agostinelli
Court stamped 'Received Jun 21, 1996'

Memorandum of Decision

The decision as to Bank accounts (res judicata), etc, is re-opened, re-visited, and re-entered. The Judgement in the Superior Court is res judicata and/or collateral estoppel, and the matter conclusively decided.

The movants have thirty days in which to appeal and permission to do so will be granted, if same is filed.

Attorney Greenberg shall provide records and documentation re the redemption price of the following:

3/31/56	C-364020576E
	C-464471630E
4/16/62	C-423632546
10/11/67	C-3516166398
10/14/64	C-446640336
9/16/95	C-457398981E

and deliver said information within thirty days from the date hereof.

The sale dated 11/24/89 is approved and confirmed on 6/10/96.

Dated at New Haven, Ct. This 18th day of June, 1996.

"S/ John A. Keyes "
John A. Keyes
Judge

Decree

State of Connecticut Probate Court, Town of Hamden
District of Hamden January 22, 1997

Estate of Antonio Agostinelli of Hamden, in said district, deceased

Present, Hon. Robert K. Killian, Jr., Acting Judge

At a Court of Probate held at the time and place set at the request of Dorina Cutler, Administratrix, c.t.a. for a hearing and any continuances thereof, set by the Court, as of record appears, After due hearing The Court Finds that:

1. Notice was given in accordance with the order of notice previously entered.
2. No person entitled to notice of said hearing wo has not signed and filed in Court a written appearance and waiver of notice or was not represented by an attorney appointed by this Court is in the military service of the United States or any allied nation.
3. Dorina Cutler, Yolanda Jablonski, Antoinetta Della Greenberg and Attorney Lawrence J. Greenberg, having been required by the court to attend said hearing, did attend.
4. The Court heard from Yolanda Jablonski and Dorina Cutler as to their concerns about the estate.

The Court Further Finds that:

1. All succession taxes due to the State of Connecticut have been paid.
2. Attorney Lawrence J. Greenberg submitted time sheets to the Court in support of his fee in the amount of $2,500. Which time sheets cover the period from December 12, 1988 through May 26, 1993.

3. There is a balance of approximately $650.00 in estate funds on hand at the present time.

It is Ordered and Decreed that:

1. The account of Antoinetta Della Greenberg, Executrix dated November 1, 1993 and received November 4. 1993 is allowed and approved subject to the following:

A. Except for the $2,500. Shown on that account as fees to Bernblum and Greenberg, o other fees are allowed for Attorney Lawrence J. Greenberg or Antoinetta Della Greenberg.

B. Antoinetta Della Greenberg is to pay the sum of $1,364.12 to Yolanda Jablonski and the sum of $744.49 to Dorina Cutler in satisfaction of the portion of the decree of the Honorable John A. Keyes, dated March 5, 1996, which provided that the tads shall be apportioned, based on the amount received, with each beneficiary or donee paying in proportion to his or her benefit.

2. Attorney Edward C. Burt, Jr., having been appointed as Administrator c.t.a. on December 30, 1991 and said appointment having been revoked on February 25, 1992, the Court hereby dispense with any requirement to any filing from him.

3. The account of Attorney Francis E. Lamboley, Successor Administrator c.t.a., dated September 29, 1993 and received October 1, 1993 is hereby allowed and approved.

4. The Court hereby waives any additional fee for this hearing.

5. Yolanda Jablonski having waived any claim to any portion of the estate funds on hand, the Court hereby orders that the balance of the estate on hand in the approximate amountof $650.00 be paid over to Dorina Cutler as reimbursement for expenses incurred and as a

fee for services renders as Successor Administrator c.t.a.

6. Dorina Cutler, Successor Administrator c.t.a., is hereby excused from any requirement of any filing with the Court except for providing the Court with a written statement as to the exact balance on hand of estate funds paid over to her pursuant to the above provision, said statement to be filed with this Court within 30 days.

"S/ Robert K. Killian Jr. "
Robert K. Killian Jr., Actin Judge

Decree Allowing Appeal From Probate

State of Connecticut) Probate Court

District of Hamden) February 19, 1997

Estate of Antonio Agostinelli, late of Hamden, in said District, deceased.

Present, Hon. Robert K. Killian, Jr., Acting Judge.

Whereas Dorina Cutler, 8046 Valencia Avenue, Stockton, CA 95209, says that she is aggrieved by the order and decree of this Court dated January 22, 1997 and

Whereas, the complainant has moved an appeal to the Superior Court for the judicial district of New Haven on April 1, 1997 from the order and decree.

Now therefore it is hereby ordered that the appeal is allowed and it is further

Ordered that notice of the appeal be given to Yolanda Joblonski, 168 North Highway 59, Barrington, Illinois 60010, Antoinetta Della Greenberg, 739 Racebrook Road, Orange, CT 06477,and Attorney Lawrence J. Greenberg, One Whitney Avenue, New Haven, CT 06510, by some proper officer serving on each of them in the manner prescribed for the service of civil process a true and attested copy of the motion for appeal and of this order at least twelve days before the return date of the appeal, and that due return of such service be made to the superior court and to this court.

"S/ Robert K. Killian, Jr. "
Robert K. Killian, Jr., Acting Judge

No. 398566 - Judicial District of New Haven Superior Court
Dorina Cutler and Yolanda Jablonski vs. Antoinetta Greenberg
Court stamped: 'Filed Jan. 29 1998 - Justine T. Antopol Asst. Clerk'

Memorandum of Decision

I

The defendant's motion to strike is denied.

Pursuant to $ 155 of the Practice Book, "[e] ach motion to strike must be accompanied by an appropriate memorandum of law citing the legal authorities upon which the motion relies." If a party fails to brief the grounds relied upon in the motion to strike, the court will "treat those issues as abandoned." State v. Bashura, 37 Conn. Sup. 745, 748-49, 436KA.2d 785 (App. Sess.1981). The defendant's memorandum of law, which consists of two pages, fails to cite any legal authority whatsoever. Additionally, the two or three sentences devoted to each ground raised in support of the motion to strike consists of a request to strike and a generalized statement as to the alleged deficiencies.

It has become a truism that "a judge rarely performs his functions adequately unless the case before him is adequately presented. "L. Brandeis, "The Living Law." 10 Ill.L.Rev. 461, 470 (1916). "Indeed, for the court to adjudicate the claims of the [defendant] ... without the [defendant] having adequately briefed the issue [s] ... risks having the court become an advocate in the nature of the [defendant's] co-counsel. This the court cannot do." (Citations omitted; internal quotation marks omitted.) Dunning-Bellis v. Casey, Superior Court, judicial district of New Haven, Housing Session at New Haven, Docket No. 9705-50793 (June 26, 1997)

Because the defendant failed to brief the issues raised in its motion to strike, the memorandum of law is not in compliance with Practice Book $ 155. For this reason, the motion to strike is denied.

II

Sua sponte, the plaintiffs are ordered by the court to amend their "complaint" in order to correct their procedural error of not filing a document entitled and in substance"reasons of appeal." In order to commence this probate appeal, the plaintiffs were required to file "reasons for appeal." See Practice Book $ 194 (stating that"[u]nless otherwise ordered, in all appeals from probate the appellant shall file reasons of appeal"). The plaintiffs did not file such a document. Rather they filed a document entitled "complaint," which contains twelve counts. However, the plaintiffs did file a "motion for appeal from probate" in which they set forth each of the probate court's rulings along with their reasons of appeal for each particular ruling. These reasons listed in the "motion for appeal from probate" are in accord with the twelve counts listed in the "complaint." In essence, it the plaintiffs, who are proceeding pro se,* mistakenly filed their "reasons of appeal" in the form of, and under the title of, a "Complaint."

According to the Connecticut Supreme Court, "the ability to amend the reasons of appeal accompanying the initiation of an appeal from probate is indistinguishable from the ability to amend pleading in other civil actions in accordance with the appropriate sections of the Practice Book." Baskin's Appeal from Probate. 194 Conn. 635, 642, 484 A.d 934 (1984).* As such, pleading in probate appeals may be amended pursuant to the Practice Book sections which govern amendments for pleading in civil actions.

According to Practice Book $ 176(a), "a party may amend his pleading ... at any time ... in the following manner: [b]y order of the court." The Connecticut Supreme Court has directed that "the court will allow an amendment unless it will cause an unreasonable delay, mislead the opposing party, take unfair

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*"In Connecticut, the trial courts as well as the appellate courts have been solicitous of the rights of pro se litigants:; LaBow v. LaBow, 13 Conn. App. 330, 336, 537 A.d 157, cert. denied, 207 Conn. 806, 540 A.d 374 (1988); and such

courts"will endeavor to see that such a litigant shall have the opportunity to have his case fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party.'Conservation Commission v. Price, 193 Conn. 414, 421 n.4, 479 A.2d 187 (1984)." Budlong v. Nadean, 30 Conn. App. 61,67, 619 A.2d 4, cert. Denied, 225 L.Ed.2d 31(1993); see also Connecticut Light & Power Co. V. Kluczinsky, 171 Conn. 516,519, 370 A.2d 1306 (1976). However, "the rules of practice cannot be ignored to the detriment of other parties." Oakland Heights Mobile Park, Inc. V. Simon, 36 Conn. App. 432, 436, 651 A.2d 281 (1994).

*The court in Baskin's Appeal was "aware of General Statues $ 45-290, [currently $ 45a-189] which provides a method for amendment of appeals in the Probate Court, but [did] not believe the legislature intended this method to be exclusive." Id., 642n.10.

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advantage of the opposing party or confuse the issues, or if there has been negligence or laches attaching to the offering party."[Internal quotation marks omitted.) McNeil v. Riccio, 45 Conn. App. 466, 474, 696 A.2d 1050 (1997).

The plaintiffs in this probate appeal who are appearing pro se have made a good faith attembpt to comply with the procedural rules applicable to proate appels. It appears tht the only correction required to bring the plaintiffs into full rocedural compliance is to change the titleand form of the document filed as a "complaint." Notably, the defendant did not alert the court's attention to the plaintiffs' procedural error, but rather continued to proceeded with the probate appeal as if it were commenced properly.

Pursuant to practice Book $ 176(a), the court orders the plaintiffs to amend the their "complaint" to "reasons of appeal," in substantial confomity with official Practice Book Forms 1005.2, 1005.3, 1005.4 or 1005.6, listing each reason without the inappropriate subtitle "count."

BY THE COURT -"S/ Bruce L. Levin "
Judge of the Superior Court.

STATE OF CONNECTICUT

No.: CV-97-0398566S : Superior Court
Dorina Cutler : Judicial District of
8043 Valencia Avenue : New Haven
Stockton, CA 95209

VS.

Estatae of Antonio Agostinelli: At New Haven
Antoinetta D. Greenberg
Executrix
739 Racebrook Road
Orange, CT 06477 : July 9, 1999

Present: The Honorable Patty Jenkins Pittman, Judge

JUDGEMENT

This action, appealing an order and decree dated January 22, 1997, made by thy Probate Court for the District of Hamden, came to this court on February 19, 1997; thence to April 30, 1997, when the plaintiff filed a Motion to Disqualify the defendant, Lawrence J. Greenberg as counsel for the defendant; then to May 16, 1997 when the plaintiff filed a Complaint thence to May 19, 1997, when the Court granted plaintiff's Motion for Joinder of Parties - Interested personas plaintiff (Yolanda Joblonski); thence to August 27, 1997, when the Court (Licari, J.) Denied plaintiffs' Motion for Correction to the Complaint; thence to February 27, 1998, when the plaintiffs' filed their Reasons for Appeal; thence to May 19, 1998, when the Court (Silbert, j.)denied the plaintiffs; Motion to Correct Appearance' thence to September 4. 1998 when plaintiffs' filed a Motion to Disqualify Attorney Lawrence Greenberg from representation of said defendant; thence to February 2, 1999, when the plaintiffs' filed and Answer to the Defendant's Special Defenses; thence to a late date, when the parties appeared and were fully heard.

The Court, having heard the parties, finds no merit to the claims of the Appellants, Dorina Cutler and Yolanda Joblonski, and the appeal is hereby dismissed.

Whereupon, it is adjudged that the order by the Probate Court should be, and is, affirmed and the appeal from that order should be, and is denied.

By the Court

" S/Patty Jenkins Pittman"
The Honorable Patty Jenkins Pittman
Judge of the Superior Court

This action thence came to August 31, 1999, when the Court denied on the papers, plaintiffs' Motion to Reopen and Set Aside Memorandum of Decision and on the same date denied plaintiffs' Motion for Further Articulation.

Dorina Cutler-Et Al v. Antoinetta D.
Greenberg, Executrix (Estate of
Antonio Agostinelli)

Dorina Cutler Et Al. V. Lawrence J.
Greenberg
(AC 20118)
Schaller, Pellegrina and Dupont Js
Argued September 14,-officially released November 14, 2000

The Judgements are affirmed.

The court consolidated both cases for trial.

General Statutes $ 45a-136 (a) provided in relevant part:"Any person aggrieved by any order, denial or decree of court of probate in any matter, unless otherwise specially provided by law, may appeal therefrom to the Superior Court in accordance with subsection (b) of this section.... "

We note that the plaintiffs seem to argue relative to this issue as well that the court's factual findings regarding the defendant's testimony were clearly erroneous. " The defendant's testimony was so contradictory that it could not have been the truth. The court allowed the defendant such latitude that [this] in fact proved that the defendant did not tell the truth on the stand." We reiterate our refusal to disturb the factual findings of a trial court unless those findings are clearly erroneous. Facts are not clearly erroneous merely because one party asserts that testimony was contradictory. Because the trial court is primarily vested with the power to make credibility determinations, the plaintiffs must do more than summarily state that a credibility determination was wrong.

In concluding their brief for the appeal from the probate decree, the plaintiffs state one misconception that we believe requires clarification. The plaintiffs appear to believe that the court found that they proved their claims by a preponderance of the evidence. That misunderstanding undoubtedly lies in the following statement in the memorandum of decision. "Also not withstanding that some of their claims against Della Greenberg

sound in fraud the court has determined the claims of the plaintiffs based on a standard of proof more favorable to them by a preponderance of the evidence." That statement simply identified the standard of proof that the court intended to apply to the facts of the plaintiffs' case. Although some of the counts in the complaint appeared to sound in fraud the court adopted a preponderance of the evidence standard on all claims. Fraud requires a higher standard of proof than preponderance of the evidence thar of 'clear, precise and unequivocal' "Baabara Weisrrass, trustee v. Kaspar.233 Conn.531,540, 661A.2d 530 (1995) The court was only explaining that it would resolve the entire case using a standard of proof more favorable to the plaintiffs than the standard required in a fraud case. It was not a statement that the court had found the plaintiffs had proven their claims by a preponderance of the evidence.

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-00-0383
Dorina Cutler et al. V. Antoinetta D. Greenberg, Executrix (Estate of Antonio Agostinelli)
Dorina Cutler et al. V. Lawrence J. Greenberg

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration to the petition by the plaintiffs Dorina Cutler and Yolanda Jablonski for certification to appeal from the Appellate Court (60 conn. App. 752 [AC20118]), it is hereby ordered that said petition be, and the same is hereby denied.

Vertefeuille, J., did not participate in the consideration or decision of this petition for certification.

BY THE COURT

"S/ Alan M. Gannuscio "
Assistant Clerk-Appellate

Dated: February 28, 2001
Notice Sent: 2/28/01
Clerk, Superior Court, New Haven, CV98 398566, CV98 410661
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Dorina Cutler , pro se
Yolanda Jablonski, pro se
James F. Cirillo, Jr.
Bernblum & Greenberg

Dorina Cutler pro se and Yolanda Jablonski, pro se, in support of petition; James F. Cirillo, Jr. and Lawrence J. Greenberg in opposition.
bjm

STATE OF CONNECTICUT
SUPREME COURT

NO. AC 20118

DORINA CUTLER ET AL.
V.
ESTATE OF ANTONIO AGOSTINELLI
ANTOINETTA D. GREENBERG, EXECUTRIX

DORINA CUTLER ET AL.
V.
LAWRENCE J. GREENERG : MARCH 30, 2001

O R D E R

The motion of the plaintiffs, filed March 15, 2001, to reopen decision, having been presented to the court, and which the court treats as a motion to reconsider the petition for certification, it is hereby ORDERED Dismissed. Vertefeiulle, J., did not participate in the consideration or decision of the motion.

BY THE COURT

"S/ Francis J. Drummond"
CHIEF CLERK

Notice Sent: March 30, 2001
Dorina Cutler, Pro Se
Yolanda Jablonski, Pro Se
James F. Cirillo, Jr.
Bernblum & Greenerg
Clerk, New Haven J.D.
(CV97-0398566/CV98-0410661)
Hon. Patty J. Pittman
RJD